

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION

DIVISION 3. STATE PROPERTY OPERATIONS

CHAPTER 1. STATE LANDS COMMISSION

ARTICLE 4.7. PERFORMANCE STANDARDS FOR THE DISCHARGE OF BALLAST WATER FOR VESSELS OPERATING IN CALIFORNIA WATERS

The California State Lands Commission (Commission) proposes to adopt the regulations as described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to adopt Section 2297.1 under Article 4.7 of Title 2, Division 3, Chapter 1 of the California Code of Regulations. This section would require the master, owner, operator, agent, or person in charge of a vessel to submit to the Commission information regarding the installation and use of ballast water treatment systems on board the vessel using forms developed by the Commission. The proposed action would comply with the provisions of Public Resources Code (PRC) Section 71205(g).

The proposed regulatory forms (Section 2297.1(a) and 2297.1(b)) would specify information reporting requirements and instructions for the master, owner, operator, agent, or person in charge of a vessel, United States or foreign, that has a ballast water treatment system installed on board the vessel and has discharged treated ballast water in the waters of the state. The reporting of this information will allow the Commission to collect and analyze data on the installation and use of ballast water treatment technologies for vessels discharging ballast in California waters. This information may guide future ballast water management actions by the Commission.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 pm on March 22, 2010. All written comments must be received at the Commission by that time. Written comments should be submitted to:

Nicole Dobroski
Staff Environmental Scientist
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825

PUBLIC HEARING

The Commission has not scheduled a public hearing for this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

Public Resources Code Section 71205(g)(2) directs the Commission to develop a form to be completed by the master, owner, operator, agent, or person in charge of a vessel. Accordingly, the proposed regulation would implement, interpret, or make specific the requirements of PRC Section 71205(g).

PRC Section 71201.7 provides the Commission with the authority to adopt regulations as necessary to implement the Marine Invasive Species Act.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PRC Section 71205.3 requires the Commission to adopt regulations governing interim and final performance standards for the discharge of ballast water. Article 4.7 was approved in October 2007 and implements California's performance standards for the discharge of ballast water.

PRC Section 71205.3 was amended in 2008 to delay the initial implementation of the performance standards for vessels with a ballast water capacity of less than 5000 metric tons. Accordingly, Article 4.7 was amended to ensure consistency between the statute and regulation.

Article 4.7 was amended again in 2009 to require vessels to install equipment for sample collection and compliance verification with the performance standards, as required by PRC Section 71206.

Public Resources Code Section 71205(g) was adopted in 2009 and directs the Commission to develop a form(s) to be completed by the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board that is used to comply with Article 4.7 and has discharged ballast in waters of the state. The proposed regulation would further implement and make specific requirements regarding the performance standards for the discharge of ballast water. Specifically, the proposed amendments enable the Commission to obtain information regarding the installation and use of ballast water treatment technologies on board vessels operating in California waters.

The Commission proposes to add Section 2297.1 to Title 2, Division 3, Chapter 1, Article 4.7 of the California Code of Regulations. Section 2297.1(a), the Ballast Water

Treatment Technology Annual Reporting Form, will allow the Commission to collect data on the installation and maintenance of ballast water treatment systems on board vessels on an annual basis. Section 2297.1(b), the Ballast Water Treatment Supplemental Reporting Form, will collect information on treated ballast water discharged into California waters following each discharge event. The information collected by these forms will be used to assess the implementation of California's performance standards for the discharge of ballast water. These forms comply with the provisions of PRC Sections 71205(g).

The "Treatment Technology Annual Reporting Form" and the "Ballast Water Treatment Supplemental Reporting Form" have been incorporated by reference in Sections 2297.1(a) and 2297.1(b), respectively, and are available for review in the Initial Statement of Reasons.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following determinations:

The Commission has determined that the proposed regulation does not impose any mandates on local agencies or school districts.

The Commission has also determined that the proposed regulation does not impose any mandate requiring state reimbursement to any local agency or school district, pursuant to Government Code Sections 17500 *et seq.* No other non-discretionary cost or savings imposed on local agencies is anticipated.

The Commission has determined that no costs or savings to any other state agencies are anticipated.

The Commission has determined that the proposed regulation will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Commission has determined that the proposed regulation will have no significant impact upon any of the following:

- (1) Creation or elimination of jobs within the State of California;
- (2) Creation of new business or the elimination of existing businesses within the State of California; and
- (3) Expansion of businesses currently doing business within the State of California.

The Commission has determined that the adoption of this regulation will not affect small businesses. None of the businesses that will be governed by these proposed regulations can be considered to be a 'small business' as defined in Gov. Code § 11342.610.

The Commission has determined that the proposed regulation will have no significant effects on housing costs.

The Commission has determined that the proposed regulation will have no impact on costs or savings in Federal funding to the State.

The Commission finds that the adoption of this regulation, which requires information reporting applying to businesses, is necessary for the health, safety, or welfare of the people of this state.

FISCAL IMPACT STATEMENT/FORM 399

The proposed regulations are reporting requirements only, as specified in PRC Section 71205(g). Therefore, minimal costs will be incurred.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulation may be directed to:

Maurya Falkner
Environmental Program Manager I
California State Lands Commission
Marine Facilities Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568
Facsimile: (916) 574-1950

Or to: Mark A. Meier
Assistant Chief Counsel
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-1853
Facsimile: (916) 574-1855

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Nicole Dobroski
Staff Environmental Scientist
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825
Telephone: (916) 574-0742
Facsimile: (916) 574-1950
Email: dobrosn@slc.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Sacramento office listed above. As of the date this notice is published in the Notice register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Nicole Dobroski at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the original proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least fifteen days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Nicole Dobroski at the address indicated above. The Commission will accept written comments on the modified regulation for fifteen days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Nicole Dobroski at the address or telephone number listed above or by visiting the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of regulations, and any future changes or modifications to the proposed text can be accessed through our website at:

http://www.slc.ca.gov/Spec_Pub/MFD/Ballast_Water/Ballast_Water_Default.html